Supreme Court of the United States

October Term, ~~1906.~~ 1913

No. 1 Original.

THE STATE OF GEORGIA,
By its Attorney-General,
JOHN C. HART,
Plaintiff

vs.

THE TENNESSEE COPPER COMPANY
AND
THE DUCKTOWN SULPHUR, COPPER AND IRON COMPANY (LIMITED),
Defendants.

IN EQUITY.

MOTION FOR LEAVE TO FILE AGREEMENT and STIPULATION

THOMAS S. FELDER,
Attorney-General of Georgia.

HOWARD CORNICK,
Attorney for Tennessee Copper Company.

Filed Oct. 20, 1913

SUPREME COURT OF THE UNITED STATES.
OCTOBER TERM, ~~1906.~~ 1913.

THE STATE OF GEORGIA,
By its Attorney-General,
JOHN C. HART,
Plaintiff,

vs.

THE TENNESSEE COPPER COMPANY AND THE DUCKTOWN SULPHUR, COPPER AND IRON COMPANY (LIMITED),
Defendants.

No. 1,
Original,
In Equity.

MOTION FOR LEAVE TO FILE AGREEMENT AND STIPULATION.

Now comes the State of Georgia by its Attorney-General, Thomas S. Felder, and the Tennessee Copper Company, by its Attorney of Record, Howard Cornick, and respectfully represent unto the court that the State of Georgia and the Tennessee Copper Company, parties to the above entitled cause, have entered into the following agreement and stipulation, to-wit:

STATE OF GEORGIA,
COUNTY OF FULTON.

WHEREAS, The General Assembly of Georgia did by a resolution approved August 6th, 1913, authorize and direct the Governor of said State to enter into the agreement and stipulation hereinafter set forth with the Tennessee Copper Company, and,

WHEREAS, Since the passage of said resolution by the General Assembly of Georgia and its approval by the Gov-

ernor the Directors of the Tennessee Copper Company have met and duly passed the following resolution:

> "Resolved, That the President of Tennessee Copper Company be, and he is, hereby authorized and directed for and on behalf of Tennessee Copper Company to enter into and execute the agreement and stipulation with the State of Georgia as set out and embodied in the resolution passed and adopted by the General Assembly of Georgia at its 1913 session, which resolution authorizes the Governor to enter into said agreement with Tennessee Copper Company for and on behalf of the State of Georgia; Resolved further, That the terms and conditions of said agreement and stipulation as embodied in said resolution adopted by the General Assembly of Georgia be, and the same are, hereby accepted by the Tennessee Copper Company."

Now, therefore, John M. Slaton, Governor of the State of Georgia, and for and in behalf of said State, acting by and under the authority of said resolution approved August 6th, 1913, and in pursuance thereof, and the Tennessee Copper Company, a corporation, acting by and through James Phillips, Jr., its President, have and do hereby enter into the following agreement and stipulation, to-wit:

IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1913.

State of Georgia, by its Attorney-General, Complainant, *vs.* Tennessee Copper Company, et al., Defendants.	Original Cause No.--------- In Equity.

AGREEMENT AND STIPULATION.

"In the above entitled cause it is agreed and stipulated by and between the State of Georgia, by and through His

Excellency, John M. Slaton, Governor of said State, hereinafter called the State and the Tennessee Copper Company, hereinafter call the company, as follows:

"1. The company agrees that it will maintain and operate its acid plant and its acid making appliances and its processes at the highest practical state of efficiency.

"2. The company further agrees that from and after the passage of this resolution, and up to October 1st, 1913, and from April 10th to October 1st, both inclusive, of each and every year, beginning with the year 1914, it will not, during the life of this agreement, operate more green ore furnaces than it finds necessary to permit of operating its sulphuric acid plant at its normal full capacity.

"3. The company shall make sworn reports to the Governor of the State, or such person as he may designate, as to the tonnage of green ore smelted and tonnage of acid made during operations under this contract, such reports to be made at such intervals, and in such form and manner as may be prescribed by the Governor of the State, or such person as he may designate, with full right on the part of such person as the Governor may designate, to inspect the plant of the company, at such time or times and for such period of time during the life of this contract between said dates of each year as to the Governor may seem advisable or necessary for his information as to such tonnage of ore smelted and acid made during said period from year to year, the compensation of such inspector not to exceed one hundred and twenty-five ($125.00) dollars per month during the time engaged in such work, to be paid by the Tennessee Copper Company on the warrant of the Governor, exclusive of the amount of sixteen thousand five hundred ($16,500.00) dollars hereinafter provided.

"4. The company agrees to set aside on or before August 15, 1913, and on or before January 10th, of every year thereafter during the life of this contract, in some National Bank to be selected by it and approved by the Governor, the sum of sixteen thousand five hundred ($16,-500.00) dollars, which shall be available during that year,

and during succeeding years as hereinafter provided, for the payment of awards that may be made for damages caused by Sulphur Dioxide Gases from the plant of the company, by a Board of Arbitration to be constituted as provided in clause 5 hereof.

5. Said Board of Arbitration shall be composed as follows: The Tennessee Copper Company shall appoint one arbitrator, whose compensation and expense shall be paid by the Tennessee Copper Company. The Governor of the State of Georgia shall appoint one arbitrator, whose compensation shall, together with actual expenses incurred, while engaged in work of such board, be paid out of the said fund. The Governor of the State of Georgia shall appoint a referee, who shall, when necessary, and upon notice as hereinafter provided, act as a standing umpire and whose compensation and actual expenses, while engaged in the work of such board shall be paid, one-half by the Tennessee Copper Company, and one-half out of said fund. The decision of the arbitrator for the State and for the company in cases where they agree shall be rendered in writing, and shall be final.

"Whenever said two arbitrators cannot agree, they, or either of them, shall notify said umpire by such notice as may be prescribed under the rules and regulations mentioned in the sixth paragraph hereof, and the decision of any two of the three members of said board as constituted shall be final.

"Said arbitrators shall personally investigate each claim submitted for arbitration hereunder by citizens of Georgia for damage to their crops or timber, caused by Sulphur Dioxide fumes from the plant of the company, and shall appraise such damage, if any, and make an award in cash out of said fund therefor, which award shall be paid upon such warrant as may be prescribed in the rules referred to in section six hereof.

"6. Immediately upon this contract becoming effective or as soon thereafter as may be convenient, the Governor of the State of Georgia or such person as he may designate,

and a representative of the company, shall meet and formulate rules and regulations for the government of the arbitration proceedings satisfactory to the Governor.

"7. Whenever there shall remain in said fund at the end of each or any year any portion thereof, the fund so remaining shall be cumulative, and such surplus shall be applied to the satisfaction of such awards as may be made in excess of sixteen thousand five hundred ($16,500.00) dollars during any succeeding year or years of the life of this contract, provided, however, that such balance as may remain of such accumulated fund at the expiration of this contract shall revert to the company. Whenever the expenses and compensation of the arbitrators appointed by the State of Georgia and the awards of such Board of Arbitration shall, in the aggregate exceed the sum of sixteen thousand five hundred ($16,500.00) dollars during any calendar year, such excess shall be paid out of the funds available for the following year or years during the life of this contract under such conditions as may be prescribed by the rules mentioned in the sixth paragraph hereof.

"The company agrees to be bound by each and every award made by said Board of Arbitration to the aggregate extent of and not exceeding the amount of money available for payment of such awards out of the sixteen thousand five hundred ($16,500.00) dollars annual appropriation.

"8. No citizen of the State of Georgia, having or claiming to have any right of action for damages on account of injury, shall be bound by the terms of this contract, unless such citizen shall voluntarily submit his claim to arbitration under the rules and regulations referred to in paragraph sixth.

"9. The State agrees that, provided this contract shall not have been breached by the company, it will not, within at least three years from and after October 1st, 1913, apply for injunction or other relief against the Tennessee Copper Company in the above entitled matter. Upon the termination of this agreement, whether by breach by the Tennessee Copper Company or by lapse of time, the rights

and defenses of the parties hereto shall not be abridged, and the status of the above entitled cause shall be as though no contract had been entered into between the parties, and the State shall have the right to undertake to obtain relief therein, and the company shall have the right to undertake to make defense thereto, except that upon cancellation or termination hereof as above provided, the company agrees that it shall not have the right to and will not make the defense that the State has waived or been deprived of the right to an ultimate decree of injunction because this contract has been entered into between the parties hereto.

"10. Whenever from time to time, in the opinion of the Governor of the State, there shall arise the necessity for a determination of the bona fide performance of this contract, then, upon thirty days written notice to the company, addressed to it at No. 2 Rector Street, New York City, the company shall appoint one arbitrator of its own selection; the State of Georgia, by the Governor, shall appoint the State Chemist of the State of Georgia, or such other person as the Governor may deem proper, as Arbitrator for the State; and such two arbitrators shall select some competent person as umpire, and in the event said two arbitrators cannot agree on an umpire, then such umpire shall be appointed by the President of the University of Virginia; which board so created shall determine the question of the bona fide performance of this contract, and a majority finding of such board on that question shall be final and binding upon the parties hereto, and in the event such finding is that there has been a breach of this contract by the company, the State may thereupon at its election, treat this contract as at an end, and the status of the above entitled cause shall thereupon be as though no contract had been entered into between the parties, and the State shall have the right to undertake to obtain relief therein, and the company shall have the right to undertake to make a defense thereto. In the event of cancellation, as provided in this clause, any funds then on deposit under the terms hereof, shall remain on deposit until exhausted by payments of such awards and expenses as may have thereto-

fore been made or as may thereafter, during the period covered by this contract, be made under the terms hereof.

"11. Neither of the parties hereto admits any of the claims or contentions of the other parties hereto in the above entitled cause, and nothing herein contained shall be construed as any admission by the company that any damage is now being or will hereafter be done to property of citizens of Georgia or to the State of Georgia.

"12. This contract unless terminated by breach as provided in paragraph 10 shall remain in effect for at least the period of time hereinbefore provided. It shall continue thereafter unless at least six months previous notice in writing shall be given by either party to the other party of its intention to terminate the contract.

"This agreement is made subject to its being permitted by the court to be filed or entered in the above entitled cause in the Supreme Court of the United States in lieu of the stipulation heretofore entered at the October Term, 1910."

In Witness Whereof, The said John M. Slaton, Governor of the State of Georgia, has hereunto attached his official signature and the seal of the executive department, and the said Tennessee Copper Company has by its President, James Phillips, Jr., signed and executed this agreement and stipulation, and attached the corporate seal of said corporation, on this the 15th day of September, A. D. Nineteen Hundred and Thirteen.

Executed in triplicate.

John M. Slaton,

(Executive Seal) Governor.

Tennessee Copper Company,

By James Phillips, Jr.,

(Corporate Seal) President.

Walter M. Briggs,

Secretary.

The premises considered the above named parties respectfully move the Court that the above agreement and stipulation be permitted to be filed and entered and made a part of the record in said cause, and under the terms and conditions of said agreement and stipulation as above set out, that the said cause be continued as to the said Tennessee Copper Company until the October Term, 1916, of this Court, without prejudice to either party.

THOMAS S. FELDER,
Attorney-General of Georgia.

HOWARD CORNICK,
Attorney for Tennessee Copper Company.

FILE COPY.

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CLERK

Supreme Court of the United States

October Term, 1913

No. 1, Original

IN EQUITY

The State of Georgia,
Complainant

vs.

The Tennessee Copper Company, and
The Ducktown Sulphur, Copper & Iron
Company, Limited

Form for final decree against the Ducktown Sulphur, Copper & Iron Company, Limited, and motion of Complainant to enter same

THOMAS S. FELDER,
Attorney General of Georgia

SUPREME COURT OF THE UNITED STATES.
OCTOBER TERM, 1913.

No. 1, Original.

THE STATE OF GEORGIA, Complainant, vs. THE TENNESSEE COPPER COMPANY AND THE DUCKTOWN SULPHUR, COPPER & IRON COMPANY, LIMITED.	IN EQUITY.

Comes now the complainant, by its counsel, and respectfully represents to the Court;

That at the October term, 1906, of this Court an order was entered in this cause awarding an injunction to the complainant as prayed for in its bill against the two defendants, the complainant being ordered to submit a form of a decree on the coming in of the Court in the following October; and

That at the October Term, 1907, on the coming in of the Court, complainant presented for the consideration of the Court a motion to postpone the submission and entry of the final decree until further application by complainant, which motion was granted by the Court, and the time to present the form of the final decree to be entered in the cause was by order of the Court enlarged as counsel might be advised, without prejudice, and on due notice; and

That at the October Term, 1913, of the Court complainant and the Tennessee Copper Company, one of the

defendants, presented for the consideration of the Court a stipulation and agreement entered into between them, and moved that they be allowed to file and make the same a part of a record in the cause, and that under the terms and conditions of the said agreement the cause be continued as to the Tennessee Copper Company until the October Term, 1916, of the Court, without prejudice. That on consideration of said motion the following order was entered in the cause:

> "On consideration of the motion for leave to file a stipulation of counsel for the respective parties herein, and that this cause be continued until the October Term, 1916.
>
> "It is now here ordered by the Court that said motion be, and the same is hereby, granted. October 20, 1913."

The said motion of the complainant and the defendant, the Tennessee Copper Company, as an inspection of the same will show, asked that the cause be continued only as the Tennessee Copper Company, and in no way contemplated the postment of the cause as to the other defendant, the Ducktown Sulphur, Copper & Iron Company, Limited and the complainant now moves the Court that the said order be modified so as by its express terms to continue the cause only as the Tennessee Copper Company, and that a final decree of injunction be now entered in the cause against the Ducktown Sulphur, Copper & Iron Company, Limited, in favor of complainant, in accordance with the decree entered herein on May 13th, 1907, a form for the same being herewith submitted to the Court.

THOMAS S. FELDER,
Attorney General of Georgia.

SUPREME COURT OF THE UNITED STATES.
OCTOBER TERM, 1913.

No. 1, Original.

THE STATE OF GEORGIA, Complainant, vs. THE TENNESSEE COPPER COMPANY AND THE DUCKTOWN SULPHUR, COPPER & IRON COMPANY, LIMITED.	IN EQUITY.

The complainant having submitted to the Court a form of a final decree as against the Ducktown Sulphur, Copper & Iron Company, Limited, in conformity with the decrees of the Court heretofore entered in this cause, and moved that the same be entered; It is now here ordered, adjudged and decreed that the defendant, the Ducktown Sulphur, Copper & Iron Company, Limited, its officers, agents, servants, employees and confederates, and all persons acting under its authority, direction or control, be and the same are hereby perpetually restrained and enjoined from using, managing, maintaining, or in any manner operating any furnace, pit, oven, or any other appliance or copper reducing method, causing, generating, giving off, or discharging any foul or dense smoke, or any poisonous, noxious, unwholesome, or unpleasant gas, vapor, odor or fume, and from the diffusing of any foul or dense smoke or poisonous, noxious, unwholesome or unpleasant gas or vapor or fume, upon

the territory or lands of the State of Georgia or the lands of the citizens of Georgia, or upon the roads and highways of said State, or from generating, causing or diffusing any foul or dense smoke, or any gas, vapor, odor, or fume damaging, destroying or injuring the property of the State of Georgia or its citizens, or causing or producing any physical or bodily harm, injury, discomfort or inconvenience to the citizens of the State of Georgia, or depriving the State of Georgia or its citizens and inhabitants of pure air and sunlight; and the said Ducktown Sulphur, Copper & Iron Company, Limited, its officers, agents, servants, employees and confederates and all persons acting under its authority, direction or control, are hereby further perpetually restrained and enjoined as prayed for in complainant's bill, and are hereby ordered to desist and refrain from doing each and all those acts, deeds and things complained of and against which relief is prayed in complainant's bill.

It is further ordered, adjudged and decreed that the said complainant do recover of the defendant the Ducktown Sulphur, Copper & Iron Company, Limited, its costs in this suit to be taxed.